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Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

FATPIPE NETWORKS INDIA LIMITED, nka
FATPIPE NETWORKS, LTD.,
Plaintiff,

v.

XROADS NETWORKS INC., a Delaware
corporation,

Defendant.

MEMORANDUM DECISION AND ORDER
GRANTING AND DENYING IN PART
MOTION FOR MODIFICATION OF CASE
SCHEDULING ORDER AND RULE 26 AND
37 (“MOTION”) (DKT NO. 266) AND
STIPULATED MOTION FOR EXTENSION OF
TIME TO FILE EXPERT REPORTS

Case No.: 2:09-cv-186 TC

District Judge Tena Campbell
Magistrate Judge David Nuffer

FatPipe’s Motion for Modification of Case Scheduling Order and Rule 26 and 37

(“Motion”) (docket no. 266) filed January 26, 2011, came on for hearing, with Barbara K. Polich representing FatPipe Networks Inc., and Blake Ostler representing XRoads Networks, Inc. The Court, considered the briefing, including XRoads’ Sur-Reply brief, and having heard argument of

counsel, and also received the Stipulated Motion for Extension of Time to File Expert Reports (docket no. 288):

ORDER

IT IS HERBY ORDERED that Plaintiff's Motion for Modification of Case Scheduling Order and Rule 26 and 37 Motion (docket no. 266) the Stipulated Motion for Extension of Time to File Expert Reports (docket no. 288) are GRANTED in part and DENIED in part.

The motions are granted to the limited extent that the date for the filing of the expert reports shall be changed from March 11, to March 23, 2011, on issues upon which a party has the burden of proof and April 8, 2011, for rebuttal reports. In so ruling, the Court denies FatPipe's request made at the hearing that the extension date be tied to Judge Campbell's ruling on the claims terms to be construed, which issue is pending before Judge Campbell and which is to be heard on March 15, 2011 (a hearing which was set after the briefing occurred). By setting firm dates, the Court is anticipating that a bench ruling will be forthcoming that will have identified the terms to be construed prior to the filing of the expert reports.

The motion is denied as to any amendment of the dates for the exchange of claim construction briefs or the expert discovery cut-off dates, the only other dates contained in the schedule, other than cut-off date for fact discovery, which is addressed below. The docket entry which states that the expert discovery cutoff is to be determined is amended accordingly to reflect the oral ruling. Any extension of the fact discovery cut-off for the purposes of taking depositions is denied, except to the extent set forth below allowing Mr. French to be deposed on only two topics.

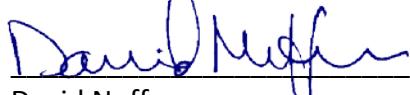
FatPipe brought a Rule 26 and 37 motion, seeking a ruling that Mr. Daren French was required to appear for an individual deposition, and, that if he did not appear, XRoads would be precluded from offering his testimony. The Court makes no ruling on FatPipe's request that XRoads cannot offer Mr. French's testimony on any issue upon which he has not been deposed. That is an issue for the trial judge.

The Rule 26 and 37 motion is granted to the limited extent that FatPipe is allowed to take the deposition of Mr. French (owner, management, and expert), in his individual capacity, but only to the extent that such deposition is combined with any deposition taken of Mr. French in his capacity as an expert. FatPipe is limited to deposing Mr. French, in his individual capacity, to only two topics, "invalidity and marketing material." (Dkt. no. 289). This combined deposition is limited to a total of 10 hours and must be taken over two consecutive days. The combined deposition is to be completed by the date of the expert deposition cut-off. XRoads is required to submit a Rule 26(a) 2(c) disclosure on Mr. French.

XRoads is required to make Mr. French available for his deposition. The cut-off time for taking the deposition will be the date of the cut-off time for the expert depositions.

DATED this 14th day of March, 2011.

BY THE COURT:



David Nuffer
United States Magistrate Judge

Approved:

Blake T. Ostler
THOMSON OSTLER & OLSEN